



**US Army Corps
of Engineers®**

PUBLIC NOTICE

**FOR ESTABLISHMENT OF
REGIONAL CONDITIONS
FOR NATIONWIDE PERMITS**

LOS ANGELES DISTRICT

Public Notice/Application No.: 98-50449-BAH

Comment Period: April 21, 2000 through May 12, 2000

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Proposal

On March 9, 2000, the U.S. Army Corps of Engineers published a notice in Part III of the Federal Register announcing its decision to issue 5 new Nationwide Permits (NWP), and modify 6 existing NWPs to replace NWP 26, the expiration date of which has been extended to June 7, 2000. The new and modified NWPs are activity-specific and authorize certain activities in tidal and non-tidal waters of the United States that have minimal adverse effects on the aquatic environment. In this Federal Register notice, the Corps also added 2 new general conditions and modified 9 existing general conditions of the NWPs to increase protection of the aquatic environment. Information on the new and modified NWPs can be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm>

In addition to the NWP general conditions, division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Regional conditions cannot be used to make the NWPs less restrictive. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., States or watersheds) or high-value aquatic systems or resource types where impacts authorized by those NWPs may be more than minimal. The Los Angeles District has requested comments regarding previously proposed regional conditions on two occasions, the last one of which was issued on July 21, 1999. Comments received on these previous notices, internal discussions, discussions with other agency personnel and the regulated community, and the final issuance of the new and modified NWPs and general conditions have allowed the Los Angeles District to focus our proposed regional conditions to a finer degree. Therefore, included in this public notice are the proposed regional conditions currently under consideration by the South Pacific Division for Los Angeles District. The Los Angeles District is seeking comments on the proposed regional conditions of nationwide permits. If the Division Engineer approves any regional conditions, those regional conditions will become effective on June 7, 2000. Unless otherwise noted, all proposed regional conditions listed in this notice are applicable for activities in Los Angeles District. Interested parties are invited to provide their views on these proposals that will become a part of the record and will be considered in the decision. These modifications and regional conditions will be issued or denied under Section 404(e) of the Clean Water Act. Comments pertinent

to the proposed regional conditions should be sent to U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office, 2151 Alessandro Drive, Suite 255, Ventura, California 93001. Comments are due by **May 12, 2000**. Alternatively, comments may be sent electronically to: bhenderson@spl.usace.army.mil

Evaluation Factors

The decision whether to establish modifications of new and modified nationwide permits, and regional conditions, will be based on an evaluation of the probable impact, including cumulative impacts, of the proposals on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposals must be balanced against their reasonably foreseeable detriments. All factors relevant to the proposals will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands and other special aquatic sites, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, the proposals reasonably expected to result in a discharge of dredged or fill material will be evaluated pursuant to the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of these proposals. All comments received will be considered by the Corps of Engineers to determine whether to modify, establish, or not establish any of these proposals. Modifications may include increasing or decreasing the effect of a particular proposed condition; such modifications would be in the spirit of the original proposal, and would ensure that projects authorized under nationwide or other general permits have minimal impacts on aquatic resources. To make these decisions, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, the other public interest factors listed above, and general workload constraints. Comments are used in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposals.

Preliminary Review of Selected Factors

Water Quality - Any permittee in Los Angeles District conducting an activity under any nationwide or regional general permit is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the appropriate California Regional Water Quality Control Board or the Arizona Department of Environmental Quality, or, for activities conducted on lands under their control, by the White Mountain Apache Tribe, unless the State water resources control boards or the White Mountain Apache Tribe certify the general permit. For any proposed activity on other Tribal land that is subject to Section 404 jurisdiction, the applicant would be required to obtain water quality certification from the U.S. Environmental Protection Agency. The District Engineer will request that the California State Water Resources Control Board, the U.S. Environmental Protection Agency, the Arizona Department of Environmental Quality, and the White Mountain Apache Tribe consider certification of the final new and modified nationwide permits with these regional conditions.

Coastal Zone Management - Any activity conducted within the Coastal Zone or that may affect Coastal Zone resources must be certified that it is in compliance with and will be conducted in a

manner that is consistent with the approved State Coastal Zone Management Program. The District Engineer will request that the California Coastal Commission consider certification of the final new and modified nationwide permits with these regional conditions.

Cultural Resources and Historic Properties - Prior to issuance of any Department of the Army permit that authorizes work that may impact a cultural resource, the Corps must ensure the activity complies with Section 106 of the National Historic Preservation Act (NHPA). Because general permits as a rule, including the proposed modifications and conditions, do not recognize any potential impacts until an application is presented, such compliance must be determined during the case-specific review process for that application. However, the District Engineer welcomes input from the State Historic Preservation Office or others with information regarding the Corps' responsibilities under the NHPA.

Endangered Species - Actions proposed for authorization under the new nationwide permits, and/or subject to the proposed modifications and/or conditions, might affect federally listed endangered or threatened species, or their designated critical habitat in certain circumstances. Discussions on establishing standard local operating procedures have been and will be conducted with regional U.S. Fish and Wildlife Service and National Marine Fisheries Service offices to address compliance with the Endangered Species Act. Such discussions may result in formal consultation for the proposed nationwide permits or regional conditions pursuant to Section 7 of the Endangered Species Act, and potentially lead to one or more specific or programmatic biological opinions. The Corps is hereby requesting that the Services suggest additional species-specific regional conditions that may assist in the recovery of threatened or endangered species.

Public Hearing - Los Angeles District conducted public meetings in Los Angeles and Phoenix in September 1998 to provide additional information pertaining to the proposed modifications and regional conditions, and to receive comments from the public. However, any person may request, in writing, within the comment period specified in this notice, that an additional public hearing or meeting be held to consider these proposals. Requests for a public hearing shall state with particularity the reasons for holding a public hearing. Alternatively, Corps personnel will be available to discuss particular issues as needed.

I. Proposed Regional Conditions and Modifications to New and Modified Nationwide Permits

1. For coastal watersheds from the southern reach of the Santa Monica Mountains in Los Angeles County to the community of Gorda in Monterey County, all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead (*Oncorhynchus mykiss*) is not hindered in any way. Therefore, in these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs based on use of a bottomless arch culvert simulating the natural streambed (i.e., substrate and streamflow conditions in the culvert are similar to undisturbed streambed channel conditions) shall be employed unless it can be demonstrated the stream or river does not support resources conducive to the recovery of federally listed anadromous salmonids, including migration of adults and smolts, or spawning. This proposal also excludes approach embankments into the channel unless they are determined to have no detectable effect on steelhead.

2. For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), and 38 (Cleanup of Hazardous and Toxic Waste), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle-and-pool complexes).
3. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the District Engineer is required, applicants must provide dated color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.
4. For Nationwide Permit 40, Agricultural Activities,
 - a. All activities that discharge dredged or fill material into perennial and intermittent watercourses are prohibited.
 - b. Construction of building pads for farm buildings is prohibited in any special aquatic site, regardless of status pertaining to former or current agricultural production, unless the hydrology of the site has been sufficiently modified to prevent the return of the site to functions and values inherent to the site before modification for agricultural purposes.
 - c. For any installation of drainage systems, the applicant must demonstrate compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) if the drainage flows into any waters of the U.S.
5. The Los Angeles District is proposing that Notification pursuant to general condition 13 be required for projects in the following resource types or geographic areas:
 - a. All special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle-and-pool complexes)
 - b. All areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas)
 - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Coast Highway on the south

- d. All perennial watercourses or waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County)

II. Proposal to exercise discretionary authority to require individual permits in the following resource types or geographic areas:

- a. All vernal pools in the following areas:
 - Santa Barbara region (Santa Barbara County from the Santa Maria area south to western Ventura County adjacent to Ojai and the Ventura River drainage, upper Santa Clara River Basin, and Simi Valley)
 - Western Riverside County region (western part of Riverside County including the Perris Basin of the lower San Jacinto River Valley, several small basins in the area between Temecula and Lake Skinner, the Santa Rosa Plateau area southwest of Lake Elsinore, and Hidden Lake pool in the montane zone of the San Jacinto Mountains)
 - San Diego/Southern Orange County region (along the coast from southern Orange County to the international border area below Otay Mesa and extending inland in San Diego County in a continuous belt to the vicinity of the Community of Ramona, the Cuyamaca Lake area, and the Lake Henshaw area)
- b. Spawning habitat for species listed as threatened or endangered, or proposed for such listing by the USFWS or NMFS, unless said species is addressed by a project-specific or programmatic biological opinion applicable to the project area pursuant to Section 7 of the Endangered Species Act, or is specifically addressed under an incidental take statement issued pursuant to Section 10(a)(1)(B) of the Endangered Species Act
- c. Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills
- d. San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects
- e. Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures

For additional information, please call Bruce Henderson of my staff at (805) 641-1128. This public notice is issued by the Chief, Regulatory Branch.